

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 7758**

**BILL NUMBER:** HB 1432

**NOTE PREPARED:** Jan 7, 2007

**BILL AMENDED:**

**SUBJECT:** Access to Public Records.

**FIRST AUTHOR:** Rep. Buck

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

*Request Response:* It requires a public agency to respond to a request to inspect or copy a public record not later than seven working days after the request is made.

*Extension:* It allows a public agency to extend by not more than 30 days the time within which the agency must grant or deny a request or provide the records if the agency: (1) responds within seven working days; and (2) specifies the reason that an extension is necessary.

*Complaint:* It requires a person to file a formal complaint with the Public Access Counselor before filing an action in court to compel disclosure of a public record. It also provides that a formal complaint must be filed with the Public Access Counselor not later than 15 days after a request to inspect or copy a public record is denied and that an action must be filed in court not later than 60 days after a request is denied.

*Attorney's Fees and Court Costs:* It provides that a prevailing plaintiff in an action to compel disclosure of a public record may collect attorney's fees and court costs only if the defendant's denial of access to the public record was arbitrary and capricious.

*Public Access Education Fund:* It establishes the Public Access Education Fund.

*Civil Penalty:* It provides for a civil penalty of \$1,000 against the person designated by a public agency as being responsible for public records release decisions for the public agency, if the person knowingly or intentionally denies access to a public record in violation of the public records law. It requires that any civil

penalties collected be deposited in the Public Access Educational Fund.

*Repeal:* It repeals a provision that states that a formal complaint concerning access to public records need not be filed with the Public Access Counselor before an action is filed in court.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** *Public Access Counselor:* Costs for the Public Access Counselor will increase if more people file complaints with the Public Access Counselor. However, penalties paid to the Public Access Education Fund may offset some of the nonrecurring costs.

*Background on the Public Access Counselor:* The Public Access Counselor issues advisory opinions to formal complaints as long as no judicial proceeding is underway. In FY 2006, the Public Access Counselor received 1,880 complaints and issued 219 advisory opinions.

*Attorney's Fees and Court Costs:* If the denial of a public record was arbitrary or capricious, a plaintiff may collect attorney's fees and court costs, which may be paid by the state in the case of a state employee. The Attorney General may incur expenses defending an individual who is a state employee from civil penalties for denial of disclosure of a public record, although the individual would be responsible for any civil penalties imposed.

**Explanation of State Revenues:** *Public Access Education Fund:* The civil penalty assessed under this section will be deposited in the Public Access Education Fund established in the bill. The Fund is administered by the Public Access Counselor to pay the expenses of the Fund and nonrecurring costs incurred under the public access chapter. The money in the Fund does not revert to the state General Fund.

*Civil Penalty:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** *Attorney's Fees and Court Costs:* A local unit may incur expenses defending an individual who is a local unit employee from civil penalties for denial of disclosure of a public record or for attorney's fees and court costs if the employee's actions were arbitrary or capricious. However, the individual would be responsible for any civil penalties imposed.

**Explanation of Local Revenues:** *Civil Penalty:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** Public Access Councilor; Attorney General.

**Local Agencies Affected:** Trial courts, city and town courts.

**Information Sources:**

**Fiscal Analyst:** Karen Firestone, 317-234-2106.